MINUTES
of the
FIRST MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

May 18, 2015
Room 322, State Capitol
Santa Fe

The first meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Jane E. Powdrell-Culbert, chair, on Monday, May 18, 2015, at 10:00 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Jane E. Powdrell-Culbert, Chair
Rep. David E. Adkins
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Candy Spence Ezzell
Rep. Bealquin Bill Gomez
Sen. Ron Griggs
Rep. Dona G. Irwin
Rep. Stephanie Maez
Sen. Richard C. Martinez
Rep. Andy Nunez
Sen. Michael Padilla
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero

Absent
Sen. Joseph Cervantes, Vice Chair
Rep. Patricia A. Lundstrom
Rep. Patricio Ruiloba
Sen. John C. Ryan
Sen. William P. Soules
Rep. Monica Youngblood

Advisory Members
Sen. Sue Wilson Beffort
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Sen. Bill B. O'Neill
Sen. John Pinto
Rep. Debbie A. Rodella
Rep. Tomás E. Salazar
Sen. Clemente Sanchez
Rep. Sheryl Williams Stapleton
Rep. Alonzo Baldonado
Sen. Jacob R. Candelaria
Rep. George Dodge, Jr.
Rep. Brian Egolf
Rep. Kelly K. Fajardo
Rep. Sarah Maestas Barnes
Sen. Mary Kay Papen
Sen. William H. Payne
Rep. Don L. Tripp

Staff
Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)
Diego Jimenez, Research Assistant, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, May 18

NMFA Mission and Purpose

NMFA staff members in the audience introduced themselves to the committee. They were Robert Brannon, chief financial officer, Zach Dillenback, chief lending officer, Dan Opperman, general counsel, and Michael Zavelle, chief financial strategist. Presenters Robert P. Coalter, chief executive officer, and Marquita D. Russel, chief of programs, introduced themselves and gave an overview of the NMFA's purpose and structure, as follows.

Project financing. Primarily, the NMFA finances community infrastructure projects. The Public Project Revolving Fund (PPRF), the Local Government Planning Fund and the Colonias Infrastructure Project Fund provide money for infrastructure and capital equipment project financing. Water projects are funded through the federally capitalized Drinking Water State Revolving Loan Fund, the state-capitalized Water Project Fund and the much smaller, privately capitalized Acequia Project Fund.

Public Project Revolving Fund. The PPRF program, the NMFA's largest, provides low-cost financing at standard and below-market interest rates for a wide variety of infrastructure and capital equipment projects. Many types of governmental entities qualify for PPRF funding. Through the program, they can get help analyzing credit and debt capacity, structuring loans and refinancing loans. PPRF bonds have notably high, advantageous ratings: AAA and Aa1. A contingent liquidity account helps to maintain the important ratings. The NMFA asked that the committee this interim discuss whether to adjust the financing structure for entities with lower-than-average median household incomes.

Local government planning. The legislature initially designed the Local Government Planning Fund program to help recipient entities plan water and wastewater projects. The legislature later expanded the program to offer greater repayment forgiveness and allow the use of funding for other types of plans, including master plans, conservation plans, economic development plans and infrastructure plans. The program has grown in the past two years.

Colonias. The Colonias Infrastructure Project Fund program helps to finance projects in designated colonias. Money from the sale of senior severance tax bonds funds the projects. An independent board oversees the program, which is in its fourth funding cycle.

Drinking water. Operated jointly with the Department of Environment, the Drinking Water State Revolving Loan Fund program finances drinking water facility construction and improvements. Recipient entities can get financing at a standard 2% rate or a disadvantaged 0% rate and possibly also principal forgiveness. After the Department of Environment publishes ranked lists of eligible projects, the NMFA processes applications for those projects in priority order.

Water projects and acequia projects. Sales of senior severance tax bonds generate most of the money for Water Project Fund project loans and grants, for which demand has grown. Project categories are: water conservation, treatment, recycling or reuse; flood prevention; federal Endangered Species Act of 1973 collaboration; water storage, conveyance and delivery; and watershed restoration and management. The NMFA recently tried to make the application and funding process easier for applicants. Each year, the Water Trust Board recommends, and the legislature considers, Water Project Fund projects and Acequia Project Fund projects for funding. Money in the Acequia Project Fund is used for grants to plan projects.

Health infrastructure programs. The NMFA also helps to finance community facilities through the Primary Care Capital Fund and the Behavioral Health Capital Fund. The Department of Health helps to administer the Primary Care Capital Fund program, which provides capital at a 3% interest rate for certain nonprofit, rural, primary-care clinics, school-based health centers and telehealth sites. Some loan repayment is forgiven in exchange for indigent patient treatment. Certain small, rural behavioral health clinics can access similar financing through the corollary Behavioral Health Capital Fund, also administered by the NMFA with help from the Human Services Department.

Economic development. The Statewide Economic Development Finance Act established the Economic Development Revolving Fund and enables the NMFA to administer the New Markets Tax Credit program. To implement the New Markets Tax Credit program, the NMFA partnered with another organization to form Finance New Mexico, LLC, which has received $156 million from the federal government to invest in businesses located in low-income communities. Most of that money is invested.

The NMFA uses money in the Economic Development Revolving Fund to partner with banks to make business loans through the Smart Money Initiative program and the Collateral Support Participation program. The state has appropriated a net of over $5 million, and the federal government over $13 million, to the fund. A provision in the act requiring executive and legislative authorization for loans was suspended and will reactivate in June. The NMFA requested that the committee consider this interim whether to continue that suspension.

Through the Smart Money Initiative, the NMFA buys interests in loans made by banks to private, for-profit and nonprofit entities, and it shares equally with the banks in the collateral used to support the loans. The Economic Development Department (EDD) certifies projects, and job creation is a condition of each loan. The EDD also helps to administer the Collateral Support Participation program. Under that program, the NMFA's participation helps to mitigate the risk to the bank, and the bank has a senior interest in the collateral.

Oversight. An independent board and the legislature oversee the NMFA. The committee reviews the NMFA's budget and proposed NMFA rules and legislation.

2015 legislation. Five of the six pieces of legislation endorsed last interim by the committee were enacted into law. They include measures to authorize infrastructure projects, appropriate money and allow public bodies to delegate authority in public-securities sales. Mr. Coalter and Ms. Russel expressed appreciation for the bills' passage.

Lastly, Ms. Russel reviewed an NMFA organizational chart and table of recent program activity.

<u>Questions and Discussion</u>

On questioning, the committee and presenters addressed the following topics.

Acequias. Ms. Russel indicated that to qualify for acequia program funding, an entity must be organized as a ditch association. She also stated that although most funded projects are located in the state's northern region, no geographical restriction applies to program eligibility.

Health infrastructure. Ms. Russel elaborated on the health infrastructure loan programs. The Human Services Department recommends projects for funding through the behavioral health infrastructure program, which is modeled after the primary care infrastructure program. The behavioral health program helps create or expand nonprofit clinics with small asset bases. In the primary care program, loan amounts, which are not capped, are based on an applicant's revenue sources and underlying cash flow.

Colonias. Ms. Russel also elaborated on the colonias infrastructure program. Only communities within 150 miles of the Mexican border are eligible. This geographic designation aligns with the federal definition of "colonia", a feature that makes possible the leveraging of federal money. Ten percent of the funding for each project is offered in the form of a loan and the rest as a grant. Sometimes funding goes toward a project phase rather than a full project. In each case of funding, an incorporated government whose boundaries encompass the colonia sponsors the project and owns and maintains the funded asset. Ms. Russel clarified that, although the 5% share of Severance Tax Bonding Fund capacity dedicated to the program remains unchanged, recent legislation reducing gross bonding capacity will decrease the amount that otherwise would have been available for the program.

A member remarked on the statewide presence of colonia-like communities and argued against the practice of concentrating in a particular region some severance tax revenue, which is understood as intended for the whole state's benefit. The member expressed a desire to reconsider legislation that would remove the program's geographic restrictions. Another member pointed out that the capital outlay program, which also relies on severance tax revenue, distributes funds unevenly.

Bank participation. Ms. Russel explained that having a subordinated interest in a loan means that if the borrower defaults, the NMFA is repaid with what collateral proceeds remain after the primary interest holder is repaid. She added that: 1) in the two bank participation programs, the NMFA partners with community banks in the case of a relatively small percentage of loans; 2) although eligible and marketed to, credit unions have not participated in the programs; 3) some money originally appropriated to the programs was reverted to help the state with solvency; and 4) the programs are marketed in a variety of ways. Members requested follow up about defaulted loans, servicing fees that the NMFA pays to banks and administrative fees that borrowers pay to the NMFA.

NMFA Board Report

John E. McDermott, chair, NMFA board, described his background with the NMFA. He joined the board in 2012 out of an interest in improving, among other things, job opportunities in the state. In the 2015 regular session, the legislature confirmed him as board chair. His aim is to help the NMFA maintain its high credit rating and operate at a high standard. Mr. McDermott expressed his gladness for the agency's clean 2014 fiscal audit and asserted that the NMFA is a well-conceived arm of government.

Mr. Coalter reviewed NMFA loan activity, grant funding and other recent NMFA activities. He highlighted increases from the past year in: loan interest income; the number of PPRF projects funded; the amount lent for water projects; and the amount lent for, and the number of, colonias projects. Mr. Coalter explained some significant percentage changes shown in the NMFA's statement of net position. He also highlighted the current efforts, including by a special subcommittee, to revamp and automate the existing bond, banking and loan management system.

In response to a committee member's question, Mr. McDermott said that the NMFA serves a variety of constituencies, but compared with their larger counterparts, small communities tend to seek financing through the NMFA rather than private sources.

Proposed Bond Sale for Winrock Tax Increment Development District (TIDD) — Bond Issuance Process; Selection of Indenture Reviewer

Jill K. Sweeney, Sherman & Howard, LLC, an attorney representing the Winrock TIDD, provided background on TIDDs and the Winrock district. Ms. Sweeney explained that tax increment financing is an economic development tool used to improve the infrastructure in a district. Bonds sold to pay for the infrastructure are repaid with tax increments. In the case of Winrock, portions of the city, county and state gross receipts tax revenue generated in the district would be used to repay its bonds. For all TIDDs, a master indenture outlines the terms for bond issuance to ensure that the proceeds from a bond sale are used according to the district's plan.

Ms. Sweeney went on to explain that legislation enacted in 2009 to allow bond issuance for the Winrock TIDD conditioned that authorization on review by the NMFA, the Legislative Finance Committee and a third party, chosen by the committee, with financing expertise. Two financial service firms, The PFM Group (PFM) and Western Financial Group (Western), each prepared materials summarizing its interest in and qualifications for serving as the third party. The committee was being asked to select at the meeting the third party to review the Winrock master indenture. A representative of each firm was expected to be available by phone if needed.

Questions and Discussion

On questioning and in its deliberation, the committee and presenters addressed the following topics.

Committee involvement. Ms. Sweeney clarified that the committee's role in the process was limited to selecting a third party to review the master indenture, not to authorizing or reviewing the project for approval. She indicated, and several members agreed, that the legislative provision requiring the committee to make that selection was peculiar. A member described reasons that it seemed inappropriate for the committee to make the selection, including that: 1) such a task is more appropriately conducted by an administrative body; 2) the committee lacks the expertise necessary for proper selection; and 3) the committee had no opportunity to conduct a thorough review of the applicant firms. Members expressed unease about whether there could be legal implications from the committee having to choose between candidates.

Candidate selection by the NMFA. Mr. Coalter said that the NMFA worked with consultants to develop a list of candidate firms for the committee to consider. A preliminary list included a New Mexico firm. Ultimately, firms with possible conflicts of interest were excluded from the list given to the committee. Members expressed concern that the NMFA did not engage in a request-for-proposals process.

Timing. Ms. Sweeney said that the work by the third party must be completed by the end of May. Mr. Coalter added that there would be no bond sale if a third party were not selected and did not review the master indenture. Responding to members' reservations to select a firm under the circumstances, David P. Buchholtz, Rodey Law Firm, an attorney representing the Winrock developer, encouraged the committee to reach a decision at the meeting. He explained that financing issues prevented the process from moving forward sooner and that the meeting was the first opportunity in many months to make the request of the committee. He added that the transaction would be at risk if not acted upon presently.

Absence of firm representatives. Members expressed dissatisfaction about the absence of firm representatives to testify, in spite of the transaction's relatively small scale, and about a sense of pressure to make a decision. Mr. Opperman relayed the firms' regret for their absence and noted the short notice they were given. Mr. Coalter added that the firms were told that they could participate by phone. Mr. Coalter had Western's representative on the phone; PFM's representative did not answer Mr. Coalter's call.

Relative strengths of each firm. Ms. Russel testified that both firms on the list had provided bond-issuance services for the NMFA in the past. Mr. Coalter said that both were experienced, qualified and based out of state and had agreed to complete the task by the end of May. He also said that the service fees in each firm's proposal — $10,000 for Western and $15,000 for PFM — seemed reasonable for the scope of work. Through Mr. Coalter, a member asked Western's representative if the firm would agree to perform the work for its proposed fee before the end of May. The representative said yes. When asked whether he had experience with other TIDDs, the representative said that he had participated in bonding programs in other states. When asked whether the difference between more standard bonding programs and TIDDs was meaningful in this context, Mr. Buchholtz responded that he believed it not to be. Several members articulated their impression that both firms were qualified and would be a good choice. Members also pointed out that the cost difference of the proposals and the fact that Western's representative was available by phone made Western the preferred choice.

Selection. On a motion made and seconded, and with two members voting in the negative, the committee selected Western as the third-party service provider.

Proposed Work Plan and Meeting Schedule

Ms. Sullivan presented the committee's 2015 proposed work plan and meeting schedule. She noted that much of the plan's content was based on statutory requirements and resembled content from previous years. At a member's request, Ms. Russel agreed to communicate to the Water Trust Board the committee's interest in seeing, by the October meeting, the list of recommended water projects. On a motion made and seconded, the committee adopted the proposed work plan and meeting schedule.

Adjournment

There being no further business before the committee, the first meeting of the NMFA Oversight Committee adjourned at 12:45 p.m.